IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20286 of 2006
With
SPECIAL CIVIL APPLICATION No. 20287 of 2006
With
SPECIAL CIVIL APPLICATION No. 20289 of 2006
With
SPECIAL CIVIL APPLICATION No. 20094 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANALI RAMESHCHANDRA SURTI THRO.HER MOTHER & GUARDIAN - Petitioner(s)
Versus
JUSTICE R J SHAH (RETD.) & 1 - Respondent(s)

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Appearance :
MR DC DAVE WITH MR RE VARIAVA for Petitioner(s) : 1,
MR BP TANNA SR. ADV. WITH MS MN KERRAVALA OF TANNA ASSOCIATES for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MS MANISHA L SHAH AGP for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/09/2006

ORAL JUDGMENT

1. Learned advocate Shri D.C.Dave seeks permission to join State Government as party respondent no.3 in each of these petitions. Permission granted. Learned Asst. Government Pleader Ms. Shah wavies service of Rule on behalf of newly added respondent no.3.

2. In this group of petitions, petitioners have approached this Court claiming admission in College of Dental Science and Research Centre at Ahmedabad, who is respondent no.2 in each of these petitions. Petitioners claim such admissions in the Non-Resident Indian (NRI for short) quota.

3. Short facts leading to these petitions are as follows:

3.1. Petitioner of Special Civil Application No.20094/06 one Ms. Meghna Amin claims NRI quota seat in respondent no.2-Dental College. She had appeared

in 12th standard examination conducted by Gujarat Board in March, 2006. She also appeared in GUJCET-2006 conducted by the State Government.

3.2. It is the case of the petitioner that her father is a British national by birth. He holds a British passport. Case of the petitioner further is that the Government of India decided to accord a special status of Overseas Citizen of India (OCI for short) to certain category of persons who though are not Indian citizens, are Persons on Indian Origin (PIO for short). This status of OCI is commonly referred to as “Dual Citizenship”. Father of the petitioner applied for such a status and he has been duly granted the status of OCI.

3.3. It is further the case of the petitioner that as per the Govt. of India policy such persons receive certain special benefits at par with NRIs particularly in respect of economic, financial and educational fields.

3.4. It is, therefore, the case of the petitioner

that being a child of a person enjoying the status of OCI, the petitioner should be treated at par with ward of NRI and be, therefore, accommodated against 15% quota of seats meant for such category of students.

3.5. It is the case of the petitioner that in response to notice issued by respondent no.1 in July, 2006, the petitioner applied for admission to the Dental College seeking admission in NRI quota seat. She supplied necessary documents and was conveyed that the outcome of her application would be conveyed in due course of time. Since the petitioner did not receive any communication from the respondents and when the petitioner noticed a news item suggesting that remaining NRI quota seats would be filled up from General category of students, the petitioner had no choice but to approach this Court.

4. With somewhat similar facts but with certain significant difference other petitioners have also approached this Court. Petitioner in Special Civil Application No.20286/06 one Ms. Manali Surti also

claims admission in NRI quota seat for Dental College run by respondent no.2. Her case is that her father had expired since sometime back. She herself as well as her mother both enjoy permanent resident status of United States. She should, therefore, be treated as NRI for the purpose of granting admission in the said quota.

4.1. She also applied in response to the same advertisement issued by respondent no.1. However, she also did not receive any response to her application.

5. Petitioner of Special Civil Application No.20287/06 one Ms. Priyanka Gadhvi also seeks admission to Dental College run by respondent no.2 in NRI quota. Her case is that though her father is an Indian Citizen and is staying in India, she herself as well as her mother both are British passport holders. This petitioner however, does not claim the status of OCI. She states that her mother is permanently residing in United Kingdom.

6. Petitioner of Special Civil Application No.20289/06 is one Ms.Krupa Parikh. She also applied for admission to respondent no.2-Dental College on NRI quota seat. She contends that she herself as well as both her parents are permanent resident of U.S.A. That status they received only recently. She should, therefore, be treated as NRI and granted admission.

7. On the other hand, shortly stated, the case of the respondent no.1-Justice R.J.Shah (retired) Admission Committee (Medical) for Self-Financed Professional Colleges (Committee for short) is that none of the petitioners qualify for being recognized as wards or children of NRIs. It is contended that to regulate such admissions, the Committee has formed rules to govern the admissions for academic year 2006-2007. It is contended that the Committee found it appropriate to adopt the definition of NRI in the Indian Income-Tax Act, 1961. Since none of the petitioners fulfill the requirement laid down therein, they have not been granted benefit of admission in such quota.

8. Learned advocate Shri Dave appearing with Shri Variava for the petitioners submitted that all the petitioners fulfill necessary requirements for being categorized as NRI students. He submitted that it was not open for the respondent no.1-Committee to provide for a rigid formula and to import the definition from Indian Income-Tax Act, wherein definition of NRI has been given for entirely different purpose.

8.1. He further submitted that intention behind permitting a special quota for NRI students is to draw larger amount of finance in the education system of the country to subsidize education in favour of students who cannot afford to pay full fees. If that be the intention, definition of NRI should receive liberal interpretation. Since the petitioners are either OCI or Green Card Holders, they should be treated as NRIs.

9. My attention was invited to the decision of Hon'ble Supreme Court in the case of T.M.A Pai

Foundation & Ors. vs. State of Karnataka & Ors. reported in (2002) 8 SCC 481, wherein, in para 30 the Hon'ble Supreme Court made reference to NRI students.

My attention was also invited to the decision of Hon'ble Supreme Court in the case of P.A.Inamdar & Ors. vs. State of Maharashtra & Ors. reported in (2005) 6 SCC 537, wherein while discussing the concept of quota for NRI students, in para 131 of the decision, the Hon'ble Supreme Court made certain observations permitting such quota of seats in favour of NRI students.

Decision in the case of A.P. Private Engineering College Management Association vs. Govt. of A.P. reported in (2000) 10 SCC 565 was relied upon, wherein in para 3 and 4 of the decision, the Hon'ble Supreme Court referred to NRI quota seats.

It may however be noted that the said decision was only making interim arrangement for regulating NRI quota, pending the final decision of the main matter and does not lay down any principle of law.

T.M.A. Pai Foundation & Ors. vs. State of Karnataka & Ors. reported in AIR 1995 Supreme Court 1938 also cited, wherein, once again in para 7 and 8 of the decision, the Hon'ble Supreme Court made reference to NRI quota seats.

This however also is the case wherein, the Hon'ble Supreme Court was considering percentage of seats to be earmarked for NRI quota and no ratio which can be applied to the present case has been laid down.

Decision in the case of Bathina Rajya Shilpa vs. NTR University of Health Sciences, Viyayawada & Ors. reported in AIR 2002 Andra Pradesh 115 was also referred to. In the said decision rendered by the Full Bench of Andhra Pradesh High Court, the Bench found that if any NRI quota seats fall vacant, the same should have been filled up treating them as payment seats.

10. With respect to the aspect of OCI, learned advocate Shri Dave submitted that the Government

published its policy and granted certain special benefits to such persons which includes parity with NRIs in terms of educational facilities besides other benefits as well.

11. On the other hand learned advocate Shri B.P.Tanna for respondent no.1-Committee with briefing advocate Ms. Kerravala opposed the petition. He submitted that none of the petitioners qualify to be categorized as NRIs. He submitted that the Committee has framed rules to better regulate the admission process for the current academic year. He submitted that all the petitioners are residing in India and many of them are such whose parents are also residing in India since long.

11.1. He submitted that the Committee decided to adopt the definition of NRI given in the Indian Income-Tax Act, to provide for a uniform yardstick. He submitted that before doing so, opinion of the learned Advocate General was obtained. He further submitted that All India Council of Technical Education (AICTE for short) has also framed statutory

regulations called the All India Council for Technical Education (Admission under Non-Resident Indian (NRI)/Foreign Nationals (FN)/Persons of Indian Origin (PIO) category/quota in AICTE approved institutions) Regulations, 2002. He pointed out that in the said regulation also to define the term NRI, provisions contained in Indian Income-Tax Act had been relied upon. He submitted that when the respondent no.1-Committee was considering, providing for uniform formula for identifying genuine NRIs, it could not have provided for two different formulae one for Engineering and related subjects covered by the AICTE regulations and another for Medical and Paramedical courses.

11.2. He further submitted that the Hon'ble Supreme Court also in the case of P.A.Inamdar & Ors. vs. State of Maharashtra & Ors. (supra) recognized that such seats should be filled up only by genuine NRI wards and not by NRI sponsored students.

12. Having heard learned advocates appearing for the parties, first question calls for consideration is

whether it was open for the respondent no.1 to provide for a definition to identify NRI students and whether the formula provided by respondent no.1 can be held to be legal.

13. It may be noted that the concept of reserving a certain quota of seats for NRI students in professional education has been in existence since long. Learned advocates appearing for the parties rightly pointed out that such quota has been recognized by the Hon'ble Supreme Court in number of cases and with passage of time, the concept has received a certain refinement. Eventually, the Hon'ble Supreme Court in the case of P.A.Inamdar & Ors. vs. State of Maharashtra & Ors. (supra) clarified the entire situation and provided for regulating admissions in such a quota by making following observations.

> “131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians (“NRI” for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of fee. In

fact, the term “NRI” in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During he course of hearing it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level of education and also to enlarge their educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of management subject o two conditions. First, such seats should be utilized bona fide by NRIs only and for

> their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate."

14. It can thus be seen that in the said decision of P.A.Inamdar & Ors. vs. State of Maharashtra & Ors. (supra), the Hon'ble Supreme Court frowned upon admissions being granted to students in NRI quota where neither students nor their parents are NRIs. It was observed that in reality under this category less meritorious students who can afford to bring more money, get admissions. Despite these observations, taking note of the submissions made before this Court that atleast limited number of

seats should be made available for such quota, as the money brought by such students enables the educational institutions to strengthen their level of education and that the people of Indian origin, who have migrated to other countries, have a desire to bring back their children for education and to get re-united with the Indian culture, the Hon'ble Supreme Court permitted reservation of such seats not exceeding 15% to NRIs depending on the discretion of the management. This however, is subject to two conditions. Firstly, such seats have to be utilised bona fide by NRIS only and for their children or wards. Secondly, within the quota, merit should not be given a complete go-by. It is also provided that amount of money so collected should be utilized for benefiting students such as from economically weaker sections of the society, on well-defined criteria. It is also provided that to prevent misutilisation of such quota or any malpractice, suitable legislation or regulation needs to be framed but so long as the State does not do it, it will be open for the Committee to regulate the same.

15. From the above decision of the Hon'ble Supreme Court, it can be seen that respondent no.1-Committee in passing of any rules or regulations framed by the Government had the authority to regulate admissions being granted to students in NRI quota seats. To regulate such procedure, if the Committee provided for a set of rules, the same cannot be termed as, beyond the powers of the Committee. Such rules would only ensure uniform implementation of the policy and would eliminate the possibility of different yardstick being applied in different cases and in turn eliminate discrimination. To that extent, I have no doubt that the Committee was justified in providing for a set of regulations to govern, the NRI quota admissions.

16. Subsidiary question is whether the prescription for deciding the claim of NRI quota as provided by the Committee in its rules was legal.

17. As noted earlier, the Hon'ble Supreme Court in the case of P.A.Inamdar & Ors. vs. State of Maharashtra & Ors. (supra) though put its stamp on

preferring NRI quota seats, provided for number of safeguards. Firstly, the intention of the Hon'ble Supreme Court was to dis-continue the practice of admissions being granted in NRI quota to students who are not wards/children of genuine NRIs. Taking note of the background that funds brought in by the NRI students would strengthen the educational activities, that parents of Indian origin who have migrated wish that their children take education from the country and also reunite with the culture, the Hon'ble Supreme Court while prescribing upper ceiling of 15% of seats, permitted the institutions to prescribe a quota for NRI students. While doing so, it was provided that admissions should be granted to genuine NRI students without completely compromise merits. Power was also given to the Government to regulate such admissions by framing rules or regulations and until such time, the same was done, authorized respondent no.1-Committee to regulate the admissions.

18. It was, therefore, necessary that a proper formula was provided to test the applications of students and verify their claim of NRIs status. If

for that purpose, the Committee provided for adoption of definition of NRI as given in Indian Income-Tax Act, to my mind they cannot be said that the Committee acted illegally. The Committee had to provide for a fair, reasonable and uniform formula to be applied in all cases. Concept of NRI is defined in Indian Income-Tax Act. If the definition given therein is taken as guidance to decide all cases of students seeking admission in such quota, I do not find that there was any illegality in the same. The Committee had to provide for some formula which was reasonable and which had to be applied uniformally to all cases. Adopting the yardstick provided in Indian Income-Tax Act, cannot be termed as a basis which was not permissible for the Committee to adopt. Definition of NRI as provided in the Income Tax Act requires a certain number of days stay abroad in the recent past for any person to claim status of NRI. This would eliminate non-genuine NRIs claiming such a status. It is a matter of common knowledge that large number of persons enjoying Permanent Residence Status of other countries such as USA still continue to reside in India. Such cases by this definition

would get eliminated.

19. Considering the anxiety of Hon'ble Supreme Court in P.A.Inamdar & Ors. vs. State of Maharashtra & Ors. (supra) and considering the fact that the philosophy behind providing quota for NRI seats is to permit large amount of funds to be brought in, in the educational system, at the same time restructuring such benefit only the genuine NRI seats without giving a complete go-by to merits, the measures adopted by the Committee cannot be termed as arbitrary or impermissible.

20. If that be the conclusion, question is whether the petitioners can claim benefit of NRI quota seats.

21. So far as the petitioners in Special Civil Application No.20296, 20287 and 20289 are concerned, there is hardly any debate possible in this regard. These petitioners have their parents who enjoyed the status of permanent resident of some other country. They admittedly do not fulfill the requirement of being NRIs as prescribed by respondent no.1-Committee

in its rules. These petitioners, therefore, cannot get benefit of reservation meant for NRI students. In case of petitioner in Special Civil Application No.20287/06, the father is an Indian citizen and residing in India. Though mother is residing in U.K. since long, she is not a citizen of India nor enjoying dual citizenship.

22. Considering all these aspects of the matter, I do not see how any of these petitioners can claim benefit of NRI seats.

23. Claim of petitioner in Special Civil Application No.20094/06, however requires to be considered.

23.1. The father of this petitioner enjoys the status of OCI. While laying down the policy for grant of such a status, Govt. of India had provided inter alia that-

> “3. Persons registered as OCI have not been given any voting rights, election to LokSabha/RajyaSabha/ Legislative Assembly/

Council, holding Constitutional posts such as President, Vice President, Judge of Supreme Court/High Court etc. Registered OCIs shall be entitled to following benefits:

(i)Multiple entry, multi-purpose life long visa to visit India;

(ii)Exemption from reporting to Policy authorities for any length of stay in India; and

(iii)Parity with NRIs in financial, economic and educational fields except in the acquisition of agricultural or plantation properties.”

23.2. In the broacher also this aspect was further highlighted as follows:

“7. Benefits to an OCI:

Following benefits will accrue to an OCI:

(i)A multiple entry, multi-purpose

life long visa for visiting India.

(ii)Exemption from registration with local policy authorities for any length of stay in India.

(iii)Parity with Non-resident Indians (NRIs) in respect of economic, financial and educational fields except in relation to acquisition of agricultural or plantation properties.

Any other benefits to an OCI will be notified by the Ministry of Overseas Indian Affairs (MOIA) under Section 7B(1) of the Citizenship Act, 1955."

23.3. It was simultaneously provided that such persons will not have following benefits:

"8. Benefits to which OCI is not entitled to:

The OCI is not entitled to vote, be a member of Legislative Assembly or Legislative Council or Parliament, cannot hold

constitutional posts such as President, Vice President, Judge of Supreme Court or High Court etc. and he/she cannot normally hold employment in the Government."

23.4. It can thus be seen that the Govt. of India also itself envisages that persons enjoying OCI status would also enjoy parity with NRIs in educational fields. This petitioner, therefore, had to be considered against NRI quota seats. Even the rules provided by respondent no.1-Committee would not prohibit such considerations. The rules only provide for the definition of NRI as defined under Indian Income-Tax Act, 1961. By deeming fiction provided by Govt. of India policy, petitioner being daughter of OCI, would have same benefits as NRI in terms of educational fields. Therefore, despite the definition adopted by the Committee for NRI, this petitioner cannot be kept out of consideration.

24. Learned advocate Shri Tanna further submitted that the Committee would not recognize any students who has studied in the State as NRI. He placed reliance of Clause 6 of the regulations in this

regard. Clause 6 reads as follows:

> "6. The Admission Rules for various professional courses already declared by the Government of Gujarat have prescribed minimum qualification for eligibility to make application for such courses. The minimum qualification would remain the same such as the student should have passed out from GS&HSEB examination and also should have appeared in GUJCET-2006 examination."

25. I am afraid, the said clause does not disclose any such intention, even if there was one on part of the Committee. Plain reading of the said clause would not permit this Court to adopt any such interpretation even after accepting the errors of the draftsmen and by stretching the interpretation thereof.

26. In the result, I find that petitioner Ms. Meghna Amin requires consideration against NRI seat.

27. Before parting, I would like to highlight two aspects of the matter.

27.1. Firstly, the regulations framed by the Committee leave to much scope for interpretation and leave certain areas unclear. For example, it is nowhere provided as to how a common merit list would be prepared for students applying from different backgrounds and coming from diverse countries and having perused their education from vastly different educational systems. This and many other aspects need elaboration for better implementation of the entire scheme. It is in this regard that the role of the State Government would assume some significance. It would be desirable that the Government should come up with the proper legislation to regulate the entire situation and provide for necessary parameters to better regulate such admissions in future.

28. With these observations, the petitions are closed.

29. In the result, Special Civil Application Nos.

20286/06, 20287/06 and 20289/06 are rejected. Rule discharged.

30. Special Civil Application No.20094/06 is allowed. Petitioner therein shall be considered as per her merit for admission in respondent no.2-Dental College in NRI quota seat.

31. All the observations made by this Court in this judgment are on the basis of regulations framed by the Committee which are operating for the current academic year only.

32. With these directions, all the petitions are disposed of.

(Akil Kureshi, J.)

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